

### REMARKS

The present Amendment is in response to the Office Action mailed January 12, 2005. Claims 1-29 are pending in the Office Action. Claims 1-26 were considered anticipated or obvious in view of the cited references. Claims 27-29 were considered allowable over the prior art. By this response, Applicant has cancelled claims 16 and 24-26 and amended claims 1, 15 and 27. Applicant respectfully submits that the amendments to the claims are based in the specification as originally filed and that no new matter has been entered. As such, Applicant respectfully requests entry of the amendments thereof. In view of the foregoing, Applicant respectfully requests reconsideration and allowance of claims 1-15, 17-23 and 27-29.

Pages 1 through 11 of the Office Action rejected claims 1-4 and 6-26<sup>1</sup> under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,499,091 to Bergsten. Pages 11 rejected claim 5 under 35 U.S.C. § 103(a) as obvious over Bergsten in view of U.S. Patent No. 6,389,459 to McDowell.

Page 13 of the office action stated that claim 27 was objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As reasons for allowance, the Office Action stated: the prior art fails to teach the limitation of "taking a static snapshot of the backup mass storage device; and writing the static snapshot to the primary mass storage device, wherein data blocks in the static snapshot that correspond to current data blocks in the overwrite map are not written to the primary mass storage device." Page 13 of the Office Action also considered claims 28-29 allowable. As reasons for allowance, the Office Action stated:

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<sup>1</sup> Page 2 of the office action states that only claims 1-20 were rejected under 35 U.S.C. 102(e) in view of Bergsten. However, the subsequent discussion of anticipation discussed claims 1-4 and 6-26. The Office Action also rejected claim 5 as obvious and claim 5 was not discussed under the anticipation standard. Thus, for purposes of this Office Action, Applicant has addressed claims 1-4 and 6-26 under anticipation and claim 5 under obviousness.

Regarding claim 28, the prior art of record fails to teach the limitation of "establishing a second channel of restoration comprising: taking a snapshot of the backup storage device; and copying the snapshot to the primary mass storage device through an overwrite map, wherein data blocks identified as current in the overwrite map are not copied from the snapshot to the primary mass storage." Applicant respectfully submits that notwithstanding the Examiner's reasons for allowance that the Applicant submits that claims 27-29 are allowable as a whole based on a combination of the limitations and not based on any one limitation in particular.

Applicant does not necessarily agree with the Examiner's characterization of the Bergsten reference. However, in order to advance prosecution of the pending claims, the Applicant has amended claim 27, which was considered allowable by the Examiner to incorporate the limitations of independent claims 24 and intervening claims 25 and 26. Applicant thus requests that claim 27, as amended, is now allowable.

Turning to claims 1-26, Applicant also asserts that based on at least the Examiner's reasons for allowance of claims 27 and 28, independent claims 1, 9, 15 and 18 are allowable.<sup>2</sup>

Claim 1, as amended, recites "taking a snapshot of the backup mass storage device; and copying the snapshot to the primary mass storage device through an overwrite map, wherein data blocks identified as current in the overwrite map are not copied from the snapshot to the primary mass storage device."

Claim 9 recites "the primary computer system tracking which read data blocks have been copied to the primary mass storage device using an overwrite map; creating a static snapshot copy of a selected data set of the backup mass storage device, the static snapshot copy preserving the selected data set as the selected data set existed at a time after the data blocks were lost at the

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<sup>2</sup> Applicant reserves the right to prosecute additional claims directed to subject matter found in previous listings of claims related to this application in subsequent continuation applications.

primary mass storage device; and copying the static snapshot copy to the primary mass storage device except for data blocks that are indicated to be current in the overwrite map."

Claim 15, as amended, recites "writing at least one data block read from the backup mass storage device to the primary mass storage device, an overwrite map being used to maintain current writes to the primary mass storage device; taking a first snapshot of the backup mass storage device for preserving the backup data blocks as the backup data blocks existed at a time after the one or more data blocks were lost; creating a first snapshot copy of the backup data blocks for transferring the backup data blocks to the primary computer; using the overwrite map, identifying any of the data blocks in the first snapshot copy that correspond to data blocks the primary computer has not written to the primary mass storage device subsequent to the primary mass storage device losing the one or more data blocks; and copying the identified data blocks from the first snapshot copy to the primary mass storage device computer, wherein data blocks identified as current in the overwrite map are not copied from the snapshot to the primary mass storage device."

Claim 18 recites "tracking which received data blocks have been copied to the primary mass storage device using an overwrite map; receiving from the backup computer system a static snapshot copy of a selected data set of the backup mass storage device, the static snapshot copy preserving the selected data set as the selected data set existed at a time after the data blocks were lost at the primary mass storage device; and copying the static snapshot copy to the primary mass storage device except for data blocks that are indicated to be current in the overwrite map."

Applicant respectfully submits that independent claims 1, 9, 15 and 18 are allowable for at least the same reasons that claims 27 and 28 were considered allowable. As such, Applicant

respectfully requests that the anticipation rejection with respect to claim 1, 9, 15 and 18 be withdrawn.

Claims 16 and 24-26 have been cancelled. As such, Applicant respectfully submits that the anticipation rejection with respect to these claims is rendered moot.

Claims 2-4, 6-8, 10-14, 17 and 19-23 depend from independent claims 1, 9, 15 and/or 18 and thus incorporate the limitations thereof. As such, Applicant respectfully submits that claims 2-4, 6-8, 10-14, 17 and 19-23 are allowable for at least the same reasons that claims 1, 9, 15 and/or 18 are allowable. Application therefore requests that the anticipation rejection with respect to claims 2-4, 6-8, 10-14, 17 and 19-23 be withdrawn.

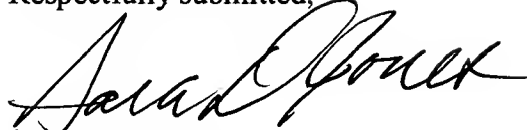
Claim 5 depends from independent claim 1 and thus incorporates the limitations thereof. As such, Applicant respectfully submits that claim 5 is allowable for at least the same reasons that claim 1 is allowable. Application therefore requests that the obviousness rejection with respect to claim 5 be withdrawn.

#### CONCLUSION

Claims 1-15, 17-23 and 27-29 are pending and are believed to be in condition for allowance. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 11<sup>th</sup> day of April 2005.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sara D. Jones".

Sara D. Jones

Attorney for Applicant

Registration No. 47,691

Customer No. 022913

Telephone No. 801.533.9800

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